

Rule 8. Director's Investigation

(a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

(b) Complaints by criminal defendants. No investigation shall commence on a complaint by or on behalf of a party represented by court appointed counsel, insofar as the complaint against the court appointed attorney alleges incompetent representation by the attorney in the pending matter. Any such complaint shall be summarily dismissed without prejudice. The Director's dismissal shall inform the complainant that the complaint may be sent to the chief district judge or trial court judge involved in the pending matter. The judge may, at any time, refer the matter to the Director for investigation. The Director may communicate with the appropriate court regarding the complaint and its disposition.

(c) Investigatory subpoena. With the Board Chair or Vice-Chair's approval upon the Director's application showing that it is necessary to do this before issuance of charges under Rule 9(a), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(d) Disposition.

(1) Determination Discipline not Warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted, the Director shall so notify the lawyer involved, the complainant, and the Chair of the District Committee, if any, that has considered the complaint. The notification shall:

- (i) Set forth a brief explanation of the Director's conclusion;
- (ii) Set forth the complainant's identity and the complaint's substance; and
- (iii) Inform the complainant of the right to appeal under subdivision (e).

(2) Admonition. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and nonserious nature, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in Rule 8(e). The Director shall notify the lawyer in writing:

- (i) Of the admonition;
- (ii) That the admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;
- (iii) That the lawyer may, by notifying the Director in writing within 14 days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and
- (iv) That unless the lawyer so demands, the Director after that time will notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, that the Director has issued the admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(3) Stipulated probation.

(i) In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and that a private probation is appropriate, and the Board Chair or Vice-Chair approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified

MINNESOTA COURT RULES

PROFESSIONAL RULES

2

period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chair or Vice-Chair's approval, the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair chosen in rotation, file a petition for disciplinary action under Rule 12. A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(4) *Submission to Panel.* The Director shall submit the matter to a Panel under Rule 9 if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (d) (2)(iii);

(iii) A reviewing Board member so directs upon an appeal under subdivision (e); or

(iv) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) *Extension or Modification of a Conditional Admission Agreement.* If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to modify or extend the terms of the agreement for a period not to exceed two years.

(e) Review by Lawyers Board. If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2) or (3), the complainant may appeal the matter by notifying the Director in writing within 14 days. The Director shall notify the lawyer of the appeal and assign the matter by rotation to a Board member, other than an Executive committee member, appointed by the Chair. The reviewing Board member may:

(1) approve the Director's disposition; or

(2) direct that further investigation be undertaken; or

(3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or

(4) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective September 1, 2005.)